

AK

STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF THE STATE
OF MICHIGAN,

Court of Appeals No: 298888

Plaintiff/Appellee,

Lower Court No: 05-009189 FC

v

ORONDE KENYATTE THOMPSON,

Defendant/Appellant.

KYM L. WORTHY (P38875)
Attorney for Plaintiff/Appellee
Wayne County Prosecutor
1441 St. Antoine - 12th Floor
Detroit, MI 48226
(313) 224-5789

GERALD FERRY (P44630)
Attorney for Defendant/Appellant
20816 E. Eleven Mile
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CLERK OF COURT
MICHIGAN COURT OF APPEALS

DEFENDANT/APPELLANT'S STANDARD 4
IN PRO PER BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

PROOF OF SERVICE

By: Oronde K. Thompson
Inmate No: 601455
Central Michigan Correctional Facility
320 N. Hubbard
St. Louis, MI 48880

STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff- Appellee,
V
DEFENDANT APPELLANT
ORONDE K THOMPSON

COURT OF APPEALS NO:
29888
LOWER COURT NO: 05-009189fc

ORAL ARGUMENT REQUESTED

APPELLANTS BRIEF

ORONDE K THOMPSON# 601455
CENTRAL MICHIGAN CORRECTIONAL
320 HUBBARD
St. LOUIS MI 48880

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CENTRAL MICHIGAN
CORRECTIONAL
INSTITUTION

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ARGUMENT:

Where cocurrent convictions used to score PRV7 were vacated after sentencing defendant should be resentenced using prpoer PRV scores...

STANDARD OF REVIEW

PRESERVATION OF ERROR

PRINCIPAL POINT OF ARGUMENT

Correct invalid sentence, charges used to score PRV7 later vacated..

INDEX OF AUTHORITIES

CASE NAMES AND CITATIONS:

People v Hannan 504 NW2d 189, 200 Mich App 123.

People v Grier 393 NW2d 551 152 Mich App

People v Francisco 711 NW2d 44(Mich)2006).

STATUTES:

MCL 777.57(PRV7)

MCL 750.321c

MCL 750.227BA.

MCL 750.24f

MCL 750.224B

11/1/2017 7:11

STATEMENT OF JURISDICTION

The Court of Appeals has jurisdiction over this ~~case~~ claim of appeal pursuant to MCR 7.203 and 7.204. Defendant was convicted after a jury trial conducted on February 12, 2010 before Judge Vonda R. Evans, 3rd Judicial Circuit Court. Defendant was sentenced on March 17, 2010, and judgement of sentence - Commitment to Department of Corrections was entered on March 17, 2010.

Defendant, being indigent, filled a notice of right to appellate review and requested for appointment of attorney on April 19, 2010. Attorney Gerald Ferry(p44630) was appointed on June 29, 2010 pursuant to claim of appeal and order appointing counsel. Transcripts of lower court trial and sentence became available to counsel on or about October 12, 2010. Attorney Ferry ~~sent~~ submitted original brief December 10, 2010.

On November 19, 2010 an Amended Judgement of sentence was entered, vacating convictions of 750.224B and 750.224F

On February 4, 2011 a certificate of discharge/ sentence Termination / Sentence Discharge By Court order for 750.224B and 750.224F was entered by prison records administration.

STATEMENT OF QUESTIONS INVOLVED

SHOULD DEFENDANT BE RESENTENCED DUE TO DISMISSAL OF CONVICTIONS USED TO SCORE PRV 7 after sentencing.

DEFENDANT/APPELLANT ANSWERS "YES"

STATEMENT OF FACTS

DEFENDANT/APPELLANT, ORONDE K THOMPSON was previously convicted in lower Court Case No; 05-009189-01 of Murder First-degree (MCL 750.316); Possession of short-barreled rifle (MCL 750.224b); and Felony Firearm (MCL 750.227b) by jury trial. In addition Defendant pled no contest to Felon in Possession Firearm (750.224f), Upon stipulation of the parties the Trial Court granted Defendant a new trial based on newly discovered evidence. This new trial was limited to the sole count of Murder First-degree.

On February 8, 17, 2010 a jury trial was conducted in this matter before Judge VONDA R EVANS, Third Judicial Circuit Court. At the conclusion of the trial the jury found Defendant guilty of the lesser included offense of Involuntary Manslaughter (MCL 750.321c).

On December 10 2010 attorney GERALD FERRY (P44630) submitted DEFENDANT /APPELLANTS BRIEF ON APPEAL. On 11/12/2010 a Amended JUDGMENT OF SENTENCE was entered the convictions and sentence for MURDER 1ST (750.316) WEAPONS FIREARM (750.224B) and FIREARM POSSESSION (750.224F) were VACATED. DEFENDANTS attorney G. FERRY was not made aware of the charges being vacated due to Defendant being unavailable

On August 27, 2005 at approximately 1:00 p.m, the DETROIT POLICE received a radio run to a single dwelling home located at 18568 Revere Street, City of Detroit. It was reported by 911 call placed by defendant that someone had been shot at this address. Upon arrival the police observed Defendant walking away from the home with two small children. The DEFENDANT returned to the home and directed the officers outside of the home to the attic. the defendant told the police officers " RIGHT HERE, UPSTAIRS, CALL AN AMBULANCE". The police entered the for further investigation and discovered a female, KIARA T BARTON lying on the attic floor shot below the right eye. The victim was still alive but unable to speak, EMS unit was dispatched to the scene.

After Defendant directed officers to the location of the victim he was asked what happened by plain clothed officer Blazewicz. Defendant stated :IT WAS AN ACCIDENT". Homicide officers arrived on the scene and Defendant gave a written statement at the scene and was arrested.

At the first trial Defendant testified that the shooting was accidental, stating that he was just joking around and believed the gun was inoperable due to previous attempts to fire the 32cal hand gun used .Defendant maintained this position at his second and third trials for this same matter.

6

At the conclusion of the Defendants third trial in this matter Defendants trial counsel JOHN J MOLLAR 43344 requested that the trial court instruct the jury as to the lesser included offense of RECKLESS DISCHARGE OF A FIREARM CAUSING INJURY OR DEATH TO A PERSON (MCL752.861). However, the trial court denied Defendants request and did not issue this instruction which resulted in Defendant being found guilty of INVOLUNTARY MANSLAUGHTER(MCL750.321C)

Defendant was subsequently sentenced on March 17, 2010, to a minimum term of 5 years to a maximum term of 15 years incarceration.

Defendants sentence was enhanced due to concurrent convictions of weapons firearm (750.224B) and firearm possession (750.224F) THE ABOVE CHARGES WERE DISMISSED AFTER SENTENCING November 12, 2010.

Defendant was given 20 points on PRV7 for the two concurrent convictions bringing his total prvs to 25 and OVS to 30 which made Defendant AM D_III on the Sentencing Grid for Class C Offenses - MCL 777.64.

ARGUMENT

WHERE CONVICTIONS OF 750.224F and 750224B WERE DISMISSED
AFTER SENTENCING BUT USED TO SCORE PRV7 DEFENDANT SHOULD BE
RESENTENCED ACCORDING TO PROPER PRV,S .

STANDARD OF REVIEW

DEFENDANTS SENTENCE WAS ENHANCED DUE TO TWO CONCURRENT
CONVICTIONS OF 750.224f and 750.224b scored in prv7.

THE TWO CONVICTIONS WERE LATER DISMISSED AFTER SENTENCING
AND AFTER BRIEF ON APPEAL WAS FILED BY ATTORNEY FERRY.

THIS ISSUE WOULD FALL UNDER NEWLY DISCOVERED EVIDENCE AND
WOULD RENDER THE CURRENT SENTENCE INVALID.
PEOPLE V HANMAN 504 NW2d 189, PEOPLE V GRIER 393 NW2d 551

PRESERVATION OF ERROR

ON TRANSCRIPT PAGES 3,4 DEFENDANTS PRIOR RECORD VARIABLE
#7 WAS RESCORED GIVING DEFENDANT 20 POINT FOR TWO CONCURRENT
CONVICTIONS, THE SAME CONVICTIONS WHICH WERE DISMISSED SOON
AFTER SENTENCING.

ANALYSIS

FROM PEOPLE V FRANCISCO 711 N.W.2d 44 MICH. 2006
Criminal Law key 1177 / Sentencing and Punishment key 34

Convicted person is entitled to serve a term of imprisonment
that is no longer than that which is lawful; it is not harmless
error when a person is imprisoned. and deprived of his or her
liberty, for "only" two or three more months than has been provid
ed for by law.

~~DEFENDANTS PROPERLY SCORED PRVS AND OVS WOULD BE TOTAL~~
~~PRV 5 total OVS 30 THIS WOULD MAKE THE DEFENDANT A B-3 ON THE~~
~~Sentencing Grid for this~~

8

DEFENDANTS PROPER TOTAL FOR Sentencing Grid for Class C
Offenses- MCL 777.64 WOULD FALL IN THE RANGE OF A B III
TOTAL PRVS BEING 5 TOTAL OVS BEING 30 with HO2 enhancement
DEFENDANTS SENTENCE MIN WOULD BE 12-30 MONTHS.WITH THE MANDATORY
24 MONTH SENTENCE FOR 750.227B A DEFENDANTS MAX MIN WOULD BE
54 months as of AUGUST 27 2011-defendant will have servered
72 MONTHS WITH NO CONCIDERATION OF PAROLE.

RELIEF REQUESTED

BASED ON THE ANALYSIS OF ATTORNEY FERRYS BRIEF SUBMITTED 12-10-2010 DEFENDANT APPELLANT REQUEST THIS COURT TO REVERSE HIS CONVICTION FOR 750.321c and REMAND FOR ENTRY JUDGEMENT OF CONVICTION OF LOWER INCLUDED OFFENSE REQUESTED AT TRIAL OF 752.861 CARELESS RECKLESS OR NEGLIGENT USE OF FIRE ARM RESULTING IN A DEATH OR INJURY TO PERSON.

CRIMINAL LAW KEY 795(i) 293 NW2d 332

WHERE THERE IS A REQUEST TO CHARGE ON A LESSER OFFENSE WHICH IS NOT A NECESSARILY INCLUDED OFFENSE. IF EVIDENCE HAS BEEN PRESENTED WHICH WOULD SUPPORT CONVICTION OF A LESSER OFFENSE, REFUSAL TO GIVE THE REQUESTED INSTRUCTION IS ERROR.

THE RULE IN MICHIGAN HAS LONG BEEN:

'where a request has been made to charge the jury on a lesser included offense, the duty of the the trial judge is to determine by the evidence . IF EVIDENCE HAS BEEN PRESENTED WHICH WOULD SUPPORT A CONVICTION OF A LESSER OFFENSE, REFUSAL TO GIVE REQUESTED INSTRUCTION IS REVERSIBLE ERROR BUT, IN THE ABSENCE OF SUCH A REQUEST, THE TRIAL COURT DOES NOT ERR BY FAILING TO INSTRUCT ON THE INCLUDED OFFENSE.

IN PEOPLE V CUMMINGS 580 NW2d 480 "WHERE A TRIAL COURT IMPROPERLY FAILS TO INCLUDE AN INSTRUCTION REGARDING A LESSER INCLUDED OFFENSE, **THE REMEDY IS TO REMAND FOR ENTRY OF CONVICTION OF THE LESSER INCLUDED OFFENSE AND FOR RESENTENCING**, OR IF THE ~~PROSECUTION~~ PROSECUTION DESIRES, FOR A RETRIAL ON THE CHARGE FOR WHICH THE DEFENDANT WAS CONVICTED.

~~IN THE COURT OF APPEALS~~ THE DEFENDANT SHOULD AT THE LEAST BE RESENTENCED DUE TO THE ERROR IN SCORING THE PRVS ADDRESSED IN THIS SUPPLEMENTAL PRO PER BRIEF.

WE ALSO REQUEST IMMEDIATE CONSIDERATION DUE TO DEFENDANT HAVING ALLREADY SERVED MORE TIME THAN THAT WHICH IS LEGALLY APPLICABLE FOR THE CURRENT CONVICTIONS ACCORDING TO SENTENCING GRID FOR CLASS C OFFENSES.

COURT OF APPEALS
CLERK'S OFFICE
11000 E. MICHIGAN
ANN ARBOR, MI 48106

2011 SEP 19 AM 11:51

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Writ

MICHIGAN DEPARTMENT OF CORRECTIONS
CERTIFICATE OF DISCHARGE /
SENTENCE TERMINATION / SENTENCE DISCHARGE BY COURT ORDER

Number 601455	Name THOMPSON, ORANDE	Institution STF	Lock P-115
-------------------------	---------------------------------	---------------------------	----------------------

In accordance with PD 03.01.135 Discharge or Termination of Sentence, the following action is taken:

- A. ☐ Discharge of prisoner from the Michigan Department of Corrections is hereby made effective _____
- ☐ Death while under sentence _____
- B. ☐ Termination of a prisoner's non-controlling sentence of _____ is hereby made effective _____
- C. ☒ Discharge by court order of prisoner's sentence of A03 1y - 5y, Poss Shrt Barld shtgn &
is hereby made effective 11/12/10 A04 1y - 5y, Weapons Felon
- ☐ Resentenced to a lesser term of _____
- ☐ Sentence reduced to Probation. _____
- ☐ Sentence reduced to Time Served. _____
- ☒ Sentence dismissed/reversed by Court. _____
- ☐ Sentence Nolle Prosequi. _____
- D. ☐ Administrative discharge of escaped prisoner is hereby made effective _____
- E. ☒ The prisoner shall continue to serve on the following sentences:
- | | | |
|-----|----------|--------------------------|
| A01 | 2Y - 2Y | FELONY FIREARM |
| A02 | 5y - 15y | INVOLUNTARY MANSLAUGHTER |


Records Administrator

Prepared by: B. Waters

02/05 /2011

2/4/11
DATE

1 MR. HOLLER: Right.

2 MS. DAWSON: Yes, your Honor.

3 MR. HOLLER: Then, so, I will-- I'll defer to

4 her on-- if she wants to start on prior record variables?

5 MS. DAWSON: Yes, your Honor.

6 With regard to the prior record variables, I

7 had indicated to Mr. Holler that I believe that prior

8 record variable--

9 THE COURT: (Interposing) I don't have a copy.

10 I'm sorry.

11 Okay, very good. I'm listening.

12 MS. DAWSON: Okay. Prior record variable

13 number seven, your Honor, is misscored. The probation

14 department has it as zero, and it should be twenty

15 points.

16 As this Court is well aware, the defendant was

17 initially charged with murder, felon in possession of a

18 firearm, possession of a short-barrel shotgun, felony

19 firearm, and as an habitual second.

20 The conviction-- he was convicted of-- he was

21 convicted, initially, of the felon in possession of a

22 firearm, the possession of the short-barrel shotgun, and

23 felony firearm.

24 Then he was retried on the-- they hung on the

25 murder.

1 He was retried, found guilty on the murder, and
2 then we retried the murder, again.

3 His felony-- felon in possession, and
4 possession of a short-barrel shotgun, are concurrent
5 convictions. So, he gets twenty points for those.

6 THE COURT: Counsel?

7 MR. HOLLER: I agree.

8 MS. DAWSON: So, he should have twenty-five
9 points for his prior record variable.

10 THE COURT: Number one?

11 MR. HOLLER: No. No, his--

12 MS. DAWSON: (Interposing) No. His total
13 prior record variable is twenty-five.

14 THE COURT: Okay. And it's twenty-five. Okay.

15 MS. DAWSON: And he is a level D as in dog.

16 THE COURT: Right.

17 And that would change-- and what about the
18 OV's?

19 MR. HOLLER: Okay. With respect to the-- with
20 respect to the OV's, let's take a quick look at those.
21 Okay.

22 With respect to the OV's, I think there are
23 fifteen points scored for psychological damage. I think
24 that's on OV-5, all right?

25 And I've read the-- I've read the presentence

CJI2d 11.20**Careless, Reckless, or Negligent Use of Firearm
with Injury or Death Resulting**

(1) [The defendant is charged with the crime of / You may also consider the lesser charge of¹] negligent use of a firearm. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that someone was [injured / killed].

(3) Second, that the [injury / death] was caused by the discharge of a gun.

[Choose (4) or (5):]

[(4) Third, that the gun was discharged by the defendant.]

[(5) Third, that at the time of the discharge the gun was under the immediate control of the defendant and that the defendant caused or allowed the gun to be discharged.]

(6) Fourth, that the discharge was the result of the defendant's carelessness, recklessness, or negligence.²

[(7) Fifth, the shooting was not the result of the defendant's willfulness or wantonness.]³

Use Note

1. Use when instructing on the crime as a lesser offense.
2. Give the definition of negligence, CJI2d 11.21.
3. Use when instructing on the crime as a lesser offense.

History

CJI2d 11.20 was CJI 11:3:01.

Commentary

See MCLA 752.861, MSA 28.436(21) in "Statutes" at the end of this chapter.

See discussion of definitions in commentary to CJI2d 11.21, 11.22, and 11.23.

Approved. SCAO Original - Court

1st copy - Corrections
2nd copy - Corrections (for return)
3rd copy - Michigan State Police CJIC4th copy - Defendant
5th copy - Prosecutor
6th copy - Cashier

STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY	JUDGMENT OF SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS <input type="checkbox"/> Amended	CASE NO. 05-009189-01-FC
---	---	-----------------------------

ORI MI - 821095J Court Address 1441 St. Antoine, Detroit, MI 48226 Courtroom 802 Court Telephone No. 313-224-5440
Police Report No.

THE PEOPLE OF THE STATE OF MICHIGAN

v

Defendant name, address, and telephone no.

Oronde K Thompson 609455
Alias(es) - Oronde Kenyatte Thompson
17673 Manderson Detroit MI 48200

CTN/TCN 05520313-01	SID MI-1918155W	DOB 06/21/1977
Defendant attorney name John J. Holler		Bar no. 43344

Prosecuting attorney name Bar no.
Lawrence Stuart Talon 36707

THE COURT FINDS:

Page 1 of 2

1. The defendant was found guilty on 02/17/2010 of the crime(s) stated below:

	CONVICTED BY	DISMISSED BY*	CRIME	CHARGE CODE (S) MCL citation/PACC Code
Count	Plea*	Court	Jury	
1			G	MURDER 1ST 750.316
2			G	WEAPONS FIREARM 750.224B
3			NG	WEAPONS FIREARM POSSESSION 750.224F

*For plea: insert "G" for guilty plea, "NC" for nolo contendere, or "MI" for guilty but mentally ill, For dismissal; insert "D" for dismissed by court or "NP" for dismissed by prosecutor/plaintiff.

- ☐ 2. The conviction is reportable to the Secretary of State under MCL 257.625(21)(b).
☐ 3. HIV testing and sex offender registration is completed.
☐ 4. The defendant has been fingerprinted according to MCL 28.243.

Defendant's driver license number

IT IS ORDERED:

- ☐ 5. Probation is revoked.
 6. Participating in a special alternative incarceration unit is ☐ prohibited. ☐ permitted.
 7. Defendant is sentenced to custody of Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM			MAXIMUM		DATE SENTENCE BEGINS	JAIL CREDIT		OTHER INFORMATION
		Years	Mos.	Days	Years	Mos.		Mos.	Days	
1	03/17/2010									VACATED
2	03/17/2010									VACATED
3	03/17/2010									VACATED

- ☐ 8. Sentence(s) to be served consecutively to: (if this item is not checked, the sentence is concurrent)
☐ each other. ☐ case numbers

9. Defendant shall pay as follows:

State Minimum	Crime Victim	Restitution	Court Costs	Attorney Fees	Fine	Other Costs	Total
\$ 68.00 x	\$	\$	\$	\$	\$	\$	\$

The due date for payment is at sentencing. Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed.

10. The concealed weapon board shall suspend for _____ days permanently revoke the concealed weapon license, permit number _____ issued by _____ County.

- ☐
11. The defendant is subject to lifetime monitoring pursuant to MCL 750.520n.

12. Court recommendation: NO ENHANCEMENT ON HABITUAL 2ND

11/12/2010

Date

Judge HONORABLE VONDA R. EVANS

P# 43475

Bar no.

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL)

Deputy Court Clerk

1 @ facility

1 to facility ✓

passed by: D.Owens CTCU

11-19-10

MCL 765.15(2), MCL 769.1k, MCL 769.16a, MCL 775.22.

Approved, SCAO Original - Court

1st copy - Corrections
2nd copy - Corrections (for return)
3rd copy - Michigan State Police CJIC4th copy - Defendant
5th copy - Prosecutor
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STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY	JUDGMENT OF SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS <input type="checkbox"/> Amended	CASE NO. 05-009189-01-FC
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ORI MI - 821095J Court Address 1441 St. Antoine, Detroit, MI 48226 Courtroom 802 Court Telephone No. 313-224-5440
Police Report No.

THE PEOPLE OF THE STATE OF MICHIGAN

v

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John J. Holler 43344Prosecuting attorney name Bar no.
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5			G		HOMICIDE-Involuntary Manslaughter	750.321C

*For plea: insert "G" for guilty plea, "NC" for nolo contendere, or "MI" for guilty but mentally ill, For dismissal; insert "D" for dismissed by court or "NP" for dismissed by prosecutor/plaintiff.

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		Years	Mos.	Days	Years	Mos.		Mos.	Days	
4	03/17/2010	2	0	0	2	0	03/17/2010	0	730	
5	03/17/2010	5	0	0	15	0	03/17/2010	0	933	

- ☐ 8. Sentence(s) to be served consecutively to: (if this item is not checked, the sentence is concurrent)
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12. Court recommendation: NO ENHANCEMENT ON HABITUAL 2ND.

11/12/2010

Date

Judge HONORABLE VONDA R. EVANS

P# 43475

Bar no.

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL)

Deputy court clerk

MCL 765.15(2), MCL 769.1k, MCL 769.16a, MCL 775.22,
MCL 780.766 MCR 6.427

STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff/Appellee,

v

ORONDE KENYATTE THOMPSON,

Defendant/Appellant.

Court of Appeals No: 298888

Lower Court No: 05-009189 FC

PROOF OF SERVICE

STATE OF MICHIGAN)

)ss

COUNTY OF WAYNE)

I, Gerald Ferry, hereby certify that I served one copy of Defendant/Appellant's Standard 4

In Pro Per Brief on Appeal and Proof of Service upon:

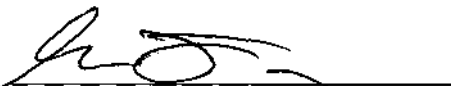
Kym Worthy
Wayne County Prosecutor
1441 St. Antoine - 12th Floor
Detroit, MI 48226

Oronde Kenyatte Thompson
Inmate No: 601455
Central Michigan Correctional Facility
320 North Hubbard
St. Louis, MI 48880

by placing same in a 1st class stamped envelope and depositing same in a US Postal Box on

9-16-11

Dated: 9-16-11


GERALD FERRY (P44630)
Attorney for Defendant/Appellant